

Department of State

§ 129.10

(vi) Classified defense articles, services and technical data;

(vii) Foreign defense articles or defense services (other than those that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, Japan, Australia, or New Zealand (see §§ 129.6(b)(2) and 129.7(a))).

(2) Brokering activities involving defense articles or defense services covered by, or of a nature described by, Part 121, in addition to those specified in § 129.7(a), that are designated as significant military equipment under this subchapter, for or from any country not a member of the North Atlantic Treaty Organization, Australia, New Zealand, or Japan whenever any of the following factors are present:

(i) The value of the significant military equipment is \$1,000,000 or more;

(ii) The identical significant military equipment has not been previously licensed for export to the armed forces of the country concerned under this subchapter or approved for sale under the Foreign Military Sales Program of the Department of Defense;

(iii) Significant military equipment would be manufactured abroad as a result of the articles or services being brokered; or

(iv) The recipient or end user is not a foreign government or international organization.

(b) The requirements of this section for prior written approval are met by any of the following:

(1) A license or other written approval issued under parts 123, 124, or 125 of this subchapter for the permanent or temporary export or temporary import of the particular defense article, defense service or technical data subject to prior approval under this section, provided the names of all brokers have been identified in an attachment accompanying submission of the initial application; or

(2) A written statement from the Office of Defense Trade Controls approving the proposed activity or the making of a proposal or presentation.

(c) Requests for approval of brokering activities shall be submitted in writing to the Office of Defense Trade Controls by an empowered official of the registered broker; the letter

shall also meet the requirements of § 126.13 of this subchapter.

(d) The request shall identify all parties involved in the proposed transaction and their roles, as well as outline in detail the defense article and related technical data (including manufacturer, military designation and model number), quantity and value, the security classification, if any, of the articles and related technical data, the country or countries involved, and the specific end use and end user(s).

(e) The procedures outlined in § 126.8(c) through (g) are equally applicable with respect to this section.

§ 129.8 Prior Notification.

(a) Prior notification to the Office of Defense Trade Controls is required for brokering activities with respect to significant military equipment valued at less than \$1,000,000, except for sharing of basic marketing information (e.g., information that does not include performance characteristics, price and probable availability for delivery) by U.S. persons registered as exporters under Part 122.

(b) The requirement of this section for prior notification is met by informing the Office of Defense Trade Controls by letter at least 30 days before making a brokering proposal or presentation. The Office of Defense Trade Controls will provide written acknowledgment of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

(c) The procedures outlined in § 126.8(c) through (g) are equally applicable with respect to this section.

§ 129.9 Reports.

(a) Any person required to register under this part shall provide annually a report to the Office of Defense Trade Controls enumerating and describing its brokering activities by quantity, type, U.S. dollar value, and purchaser(s) and recipient(s), license(s) numbers for approved activities and any exemptions utilized for other covered activities.

§ 129.10 Guidance.

(a) Any person desiring guidance on issues related to this part, such as

whether an activity is a brokering activity within the scope of this Part, or whether a prior approval or notification requirement applies, may seek guidance in writing from the Office of Defense Trade Controls. The procedures and conditions stated in §126.9 apply equally to requests under this section.

PART 130—POLITICAL CONTRIBUTIONS, FEES AND COMMISSIONS

Sec.

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AUTHORITY: Sec. 39, Arms Export Control Act, 90 Stat. 767 (22 U.S.C. 2779); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2658.

SOURCE: 58 FR 39323, July 22, 1993, unless otherwise noted.

§ 130.1 Purpose.

Section 39(a) of the Arms Export Control Act (22 U.S.C. 2779) provides that the Secretary of State shall prescribe regulations with respect to reporting on certain payments relating to sales of defense articles and defense services. The provisions of this part implement that requirement. Definitions which apply to this part are contained in §§ 130.2 through 130.8.

§ 130.2 Applicant.

Applicant means any person who applies to the Office of Defense Trade Controls for any license or approval re-

quired under this subchapter for the export of defense articles or defense services valued in an amount of \$500,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a person to whom the required license or approval has been given.

§ 130.3 Armed forces.

Armed forces means the army, navy, marine, air force, or coast guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

§ 130.4 Defense articles and defense services.

Defense articles and defense services have the meaning given those terms in paragraphs (3), (4) and (7) of section 47 of the Arms Export Control Act (22 U.S.C. 2794 (3), (4), and (7)). When used with reference to commercial sales, the definitions in §§ 120.6 and 120.9 of this subchapter apply.

§ 130.5 Fee or commission.

(a) *Fee or commission* means, except as provided in paragraph (b) of this section, any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

(1) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with an applicant, a supplier or a vendor; and

(2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

(b) The term fee or commission does not include:

(1) A political contribution or a payment excluded by § 130.6 from the definition of political contribution;

(2) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular